

Message Text

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70

ACTION AF-08

INFO OCT-01 EUR-12 IO-13 ISO-00 ACDA-10 SCCT-01 SY-05

DHA-02 CIAE-00 DODE-00 PM-04 H-02 INR-07 L-03 NSAE-00

NSC-05 PA-02 PRS-01 SP-02 SS-15 NSCE-00 SSO-00

USIE-00 INRE-00 /093 W

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O R 131603Z MAY 76

FM AMEMBASSY CAPE TOWN

TO SECSTATE WASHDC IMMEDIATE 5199

INFO AMCONSUL DURBAN

AMCONSUL JOHANNESBURG

AMEMBASSY LONDON

AMEMBASSY LUSAKA

AMEMBASSY PRETORIA

USMISSION USUN NEW YORK

UNCLAS CAPE TOWN 0581

E.O. 11652: N/A

TAGS: SF, PINS, PINT

SUBJ: CAPE BAR ASSOCIATION SENSITIVE ABOUT ITS
SECURITY LEGISLATION STATEMENT

REF: CAPE TOWN 0564

1. ATTEMPTS BY EMBOFF TO SECURE COMPLETE STATEMENT OF
CAPE PROVINCE BAR COUNCIL DEALING WITH PROPOSED SECURITY
LAW AMENDMENTS (REFTEL) HAVE PROVEN UNSUCCESSFUL OWING TO
APARENT SENSITIVITY ON PART OF BAR COUNCIL LEADERSHIP.
REQUESTS MADE VIA LAWYERS KNOWN TO EMBASSY TO PRESIDENT OF
BAR COUNCIL AND BY EMBOFF DIRECTLY TO MEMBER OF ITS BOARD
WERE REBUFFED.

2. OFFICIAL EXCUSE WAS THAT NO TEXT IN ENGLISH ACTUALLY
EXISTS. LAWYER CLOSE TO EMBASSY, HOWEVER, SAID THAT BAR
COUNCIL PRESIDENT HAD TOLD HIM THAT HIS ORGANIZATION COULD
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NOT BE IN POSITION OF BEING SEEN TO AID OVERSEAS FORCES

WHICH GOVERNMENT MIGHT VIEW AS HOSTILE. HE REPORTEDLY SAID THAT HE DIDN'T WANT HIS VIEWS SPLASHED ON FRONT PAGE OF WASHINGTON POST. BAR COUNCIL MEMBER WHO TALKED TO EMBOFF DID, HOWEVER, DRAW ATTENTION TO TEXT OF STATEMENT WHICH WAS PUBLISHED IN AFRIKAANS NEWSPAPER DIE BURGER MAY 12. FOLLOWING IS UNOFFICIAL EMBASSY TRANSLATION OF STATEMENT WHICH, AS DEPT WILL SEE, DOES NOT DIFFER IN ANY SUBSTANTIVE MANNER FROM CAPE TIMES SUMMARY WHICH SENT REFTTEL.

3. EXPERIENCE HIGHLIGHTS EXTREME SENSITIVITIES OF SOUTH AFRICAN WHITES WHEN IT COMES TO OPPOSING WHAT THEIR GOVERNMENT ARGUES IS IMPORTANT MATTER OF NATIONAL SECURITY. DESIRE OF BAR COUNCIL'S LEADERSHIP NOT TO AGGRAVATE CONSERVATIVE ELEMENTS WITHIN THE COUNCIL ALSO PROBABLY PLAYED IMPORTANT PART IN RELUCTANCE TO HELP EMBASSY.

4. BEGIN TEXT:

"DETENTION WITHOUT A HEARING BY OUR COURTS CONFLICTS WITH THE PRINCIPLES USUALLY APPLIED IN THE S.A. ADMINISTRATION OF JUSTICE. THE BAR COUNCIL REALIZES THAT AT TIMES IN A NATIONAL EMERGENCY SITUATION IT MIGHT BE NECESSARY TO SOMETIMES DEVIATE FROM THESE PRINCIPLES. IF, HOWEVER, IT BECOMES NECESSARY TO DEVIATE FROM THESE PRINCIPLES, THE BAR COUNCIL BELIEVES THAT SUFFICIENT AND EFFECTIVE SAFETY MEASURES SHOULD BE MADE.

THE POWER OF THE EXECUTIVE AUTHORITY TO DETAIN PEOPLE WITHOUT A HEARING, AND IN TRUTH, WITHOUT ANY PRELIMINARY OCCASION TO MAKE ANY PROTEST, WILL BECOME IMMENSELY EXTENSIVE. THIS POWER CAN BE AWARDED TO THE EXECUTIVE AUTHORITY AND REMAIN IN FORCE WHETHER A NATIONAL EMERGENCY EXISTS OR NOT. THE CONCERN OF THE BAR COUNCIL IS INCREASED BY THE VAGUENESS OF THE UNDERSTANDING "TO PARTICIPATE IN ACTIVITIES WHICH THREATEN THE SAFETY OF STATE OR THE MAINTENANCE OF PUBLIC ORDER".

THE MORE VAGUE AND LESS THE BEHAVIOUR IS DESCRIBED WHICH LEADS TO THE DETENTION WITHOUT A HEARING, THE MORE IMPORTANT IT IS THAT JUDGES OF THE SUPREME COURT OF SOUTH AFRICA, AND NOT A MEMBER OF THE EXECUTIVE AUTHORITY, SHOULD BE ENTRUSTED WITH THE RESPONSIBILITY TO DECIDE WHETHER THE PERSON HAS MADE HIMSELF GUILTY OF SUCH BEHAVIOUR AND WHETHER HIS FREEDOM SHOULD BE TAKEN AWAY.

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THE BAR COUNCIL ALSO THINKS THAT THE PROPOSED REVISED PROCEDURES IN THE BILL DOES NOT OFFER A PERSON SUFFICIENT OR EFFECTIVE PROTECTION. FIRSTLY, IT ALLOWS THE MINISTER OF JUSTICE TO IGNORE THE RECOMMENDATIONS OF THE REVIEW COMMITTEE. THE PROTECTION WHICH THE LEGAL REVIEW SHOULD SUPPLY, BECOMES GREATLY FRUSTRATED BY THIS.

SECONDLY, THE COMPILATION OF THE REVIEW COMMITTEE CAN BE SUCH THAT ITS MEMBERS CANNOT HAVE THE SAME INDEPENDENCE AS A JUDGE OF THE SUPREME COURT. ACCORDING TO THE OPINION OF THE BAR COUNCIL, IT IS IMMENSELY IMPORTANT THAT THE PERSON WHOSE RESPONSIBILITY IT IS TO REVIEW THE DETENTION OF PERSONS UNDER LEGISLATION OF THIS KIND MUST POSSESS THE NECESSARY MEASURES OF INDEPENDENCE SO THAT THEIR DECISIONS CANNOT BE INFLUENCED BY PUBLIC OPINION.

FURTHERMORE, THE BAR COUNCIL WOULD PREFER IT THAT A REVIEW COMMITTEE BE COMPOSED OF JUDGES OF THE SUPREME COURT WHOSE DECISIONS MUST BE BINDING ON THE EXECUTIVE AUTHORITY.

THE BAR COUNCIL WOULD ALSO PREFER THAT THE POWER OF DETENTION WITHOUT A HEARING ONLY BE GIVEN WHEN A NATIONAL EMERGENCY SITUATION EXISTS, AND THEN ONLY AS LONG AS THE EMERGENCY SITUATION CONTINUES. THE PROPOSED BILL MAKES PROVISION THAT THESE POWERS CAN BE GIVEN BY MEANS OF A PROCLAMATION AND WITHOUT REFERRING TO PARLIAMENT. THE PROPOSED BILL MAKES NO PROVISION FOR THE ANNUAL SUBMISSION TO PARLIAMENT AS THE CASE IS IN THE PRESENT BILL. THE PRESENT BILL STIPULATES THAT THE EXISTING POWERS CAN BE EXTENDED, FROM TIME TO TIME, FOR A PERIOD OF NOT MORE THAN TWELVE MONTHS AT A TIME, ON DECISION OF THE SENATE AND THE HOUSE OF ASSEMBLY"

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: NATIONAL SECURITY, LAW, POLITICAL REPRESSION, ATTORNEYS, PUBLIC ATTITUDES
Control Number: n/a
Copy: SINGLE
Draft Date: 13 MAY 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976CAPET00581
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760185-0084
From: CAPE TOWN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760559/aaaabyqw.tel
Line Count: 141
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION AF
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 76 CAPE TOWN 564
Review Action: RELEASED, APPROVED
Review Authority: CollinP0
Review Comment: n/a
Review Content Flags:
Review Date: 02 JUL 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <02 JUL 2004 by wolfsd>; APPROVED <19 JAN 2005 by CollinP0>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CAPE BAR ASSOCIATION SENSITIVE ABOUT ITS SECURITY LEGISLATION STATEMENT
TAGS: PINS, PINT, SF
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006